

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO (MVA) No.329 of 2003.

Reserved on: 21.06.2007.

Date of decision: July 04, 2007.

Prem Lal

... Appellant

Versus

Premi Devi & Anr.

... Respondents

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting? No

For the Appellant : Mr.Rajiv Jiwan, Advocate.

For the Respondents : Mr.T.S.Chauhan, Advocate for respondent No.1.

Kuldip Singh, Judge.

The husband is in appeal against judgment dated 13.9.2002 passed by learned District Judge, Bilaspur in HMA Petition No.9 of 1999 dismissing the petition of the husband seeking divorce on the grounds of cruelty and adultery. The parties are referred in the same manner as in the impugned judgment.

2. The brief facts are that husband filed a petition under Section 13(1)(i) & (ia) of Hindu Marriage Act, 1955 against wife

Whether the reporters of the local papers may be allowed to see the Judgment? Yes

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seeking divorce on the grounds of adultery and desertion. The alleged adulterer Krishan Lal was also impleaded as respondent No.2.

3. The further facts are that Smt.Premi Devi married to Prem Lal on 5th of Magh Sambat 2040 B.K. Two daughters were born from the wedlock. The elder daughter was 12 years of age and younger daughter was 9 years of age in March 1999. The petitioner and respondent No.1 were putting together till 26.4.1998 on which date when petitioner and respondent No.1 were working in the fields, the respondent No.1 picked up quarrel with petitioner, misbehaved with him. The respondent No.1 had developed illicit relations with respondent No.2 and she became pregnant because of this relationship. On 9.2.1999 petitioner reported the pregnancy of respondent No.1 to the local Gram Panchayat. The respondent No.1 was called by the Panchayat where she admitted charge of adultery before the Gram Panchayat in presence of the petitioner. She had stated that she had been carrying a child and the petitioner was not father of the child yet to be born. The petitioner did not have physical relations with respondent No.1 after 26.4.1998. The respondent No.1 gave birth to the third daughter on 2.4.1999. This has caused physical and mental cruelty to the petitioner and, therefore, the petitioner filed the divorce petition on the grounds of cruelty and adultery.

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4. The respondent No.1 contested the petition and has admitted her marriage with petitioner. She has denied that she picked up quarrel with petitioner on 26.4.1998 in the fields as alleged. She has also denied that she used foul language against the petitioner and misbehaved with him. The petitioner and respondent No.1 had been putting up in the matrimonial house after 26.4.1998. She has denied that she ever admitted charge of adultery with respondent No.2 or with anyone else before the Gram Panchayat or elsewhere. She had not appeared before Gram Panchayat. Respondent No.2 has alleged that after the birth of two daughters, the petitioner had not been carrying on well with respondent No.1 after the pregnancy of respondent No.1 in 1998. The petitioner got the examination of pregnancy of respondent No.1 which revealed the sex of the child. The petitioner started neglecting respondent No.1 and refused maintenance to her. The petitioner dropped respondent No.1 at her parents' house on 9.2.1999 for delivery. The respondent No.1 gave birth of a female child out of her union with petitioner on 2.4.1999. She has denied that she treated the petitioner with cruelty. Respondent No.2 denied having carrying on with respondent No.1.

5. The learned District Judge decided the issues of cruelty and adultery against the petitioner and dismissed the petition on 13.9.2002.

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6. I have heard the learned counsel for the parties and have also gone through the record.

7. The learned counsel for the husband, who has filed the appeal, has submitted that the learned District Judge has misconstrued, misinterpreted and misapplied the pleadings and evidence on record and has erred in dismissing the petition on the grounds of cruelty and adultery. The learned counsel for the respondents has supported the impugned judgment.

8. The husband has appeared as PW-1 and has stated that respondent No.1 was called by the Panchayat. He was also present there and on 8.2.1999 before the Panchayat, she stated that child be shown against the name of respondent No.1 and not against the name of the petitioner in the record. He has stated that respondent No.1 had illicit relations with respondent No.2 and the child is the result of that illicit relation. In cross examination, he has denied that he maltreated respondent No.1 as she had given birth to daughters. He has also denied that on 9.2.1999 respondent No.1 was dropped at her parents' house at the instance of the petitioner.

9. PW-2 Ghalu Ram is the real uncle of petitioner, therefore, he is interested witness and his testimony cannot be relied. PW-3 Chet Ram has deposed that in 1998-99 he was Pradhan Gram Panchayat, Kachauli and when Premi Devi and Prem Lal came before Panchayat at that time she did not name any person for illicit

relations. Premi Devi has appeared her own witness and she has supported her case. RW-2 Sukh Ram is father of respondent No.1 and he has deposed that on 9.2.1999 his son in law etc. have dropped respondent No.1 at his residence. The petitioner is not happy with respondent No.1 because she has given births to daughters. RW-3 Gorakh Singh has deposed that petitioner ill-treats respondent No.1 because she has given birth to daughters. The respondent No.2 has appeared as RW-4 and has stated the Premi Devi is his *Bua*. He has no illicit relations with Premi Devi. He has been impleaded as party in the case because he has litigation with the petitioner. Ext.D-1 is the certified copy of judgment dated 29.9.2000 filed by Prem Lal against Premi Devi, Krishan Lal and Gram Panchayat seeking injunction from getting the name of child likely to be born recorded in the Panchayat in the name of Prem Lal. This suit was dismissed by learned Sub Judge 1st Class, Bilaspur.

10. The petitioner has miserably failed to prove allegations of adultery and cruelty against respondent No.1. There is no worth believing evidence on record that respondent No.1 is living in adultery with respondent No.2 and third daughter was born to respondent No.1 from respondent No.2. It has come on record that petitioner got the examination of respondent No.1 when she was pregnant and in that examination sex of child was revealed as female. The petitioner was not happy with this. He maltreated respondent No.1 and

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dropped her at the residence of her parents on 9.2.1999 and respondent No.1 ultimately delivered female child on 2.4.1999. It is not believable that a lady would admit her adulterous relations in a Panchayat. The petitioner has concocted a cock and bull story regarding alleged adultery of respondent No.1 with respondent No.2. The third child was born between the subsistence of marriage between petitioner and respondent No.1 and shall be presumed to be the issue of petitioner from respondent No.1 under Section 112 of the Evidence Act. The petitioner has miserably failed to rebut this presumption. The Court below has rightly appreciated the evidence on record. The learned counsel for the petitioner has failed to make out any case for interference.

11. The result of above discussion is that the appeal is dismissed with costs quantified at Rs.5000/- to be paid by the appellant / husband to respondent No.1 wife.

July 04, 2007_(soni)

(Kuldip Singh)
Judge.

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